

SERVICE DATE - JUNE 13, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 33 (Sub-No. 263X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN COOK
COUNTY, ILL.

Digest:¹ This decision waives a regulatory provision that would result in the expiration of Union Pacific Railroad Company's authority to abandon approximately 1.3 miles of rail line in Cook County, Ill., and grants the City of Chicago's request to extend the deadline to negotiate interim trail use for the line.

Decided: June 12, 2019

On October 29, 2008, Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon the Weber Industrial Lead from milepost 5.8 near Wilson Avenue, Chicago, to milepost 9.5 near Touhy Avenue, Skokie, in Cook County, Ill., a distance of 3.7 miles (the Line). Notice of the exemption was served and published in the Federal Register on November 18, 2008 (73 Fed. Reg. 68,497). The exemption became effective on December 18, 2008.

On December 9, 2008, the City of Chicago, acting by and through its Department of Transportation (the City), filed a request for the issuance of a notice of interim trail use (NITU) under § 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, for the portion of the Line between milepost 5.8, near Wilson Avenue, and approximately milepost 8.4, near Devon Avenue, a distance of approximately 2.6 miles. On December 11, 2008, UP agreed to negotiate with the City for possible interim trail use. On December 17, 2008, the Board reopened the proceeding, issued a NITU, and gave the parties until June 16, 2009, to negotiate for interim trail use.² That deadline was extended a number of times; the most recent

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² In the same decision, the Board authorized the Village of Lincolnwood, Ill. (the Village), to negotiate an interim trail use/rail banking agreement with UP for the portion of the Line between approximately milepost 8.4 at Devon Avenue and approximately milepost 9.45 near Touhy Avenue, a distance of approximately 1.05 miles. On April 20, 2016, after a series of
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negotiating period for the segment between milepost 7.1 and milepost 8.4³ expired on April 30, 2018.

On April 30, 2018, the City filed a request to extend the NITU negotiating period to October 27, 2018. UP responded on May 3, 2018, indicating that it agreed to the requested extension. As a result of an administrative oversight, however, the Board did not act on the request. The City did not file a subsequent request to extend the 180-day NITU negotiating period in October 2018. Then, on April 25, 2019, approximately one-year after its last request, the City again requested that the NITU negotiating period be extended, this time to October 22, 2019. On May 7, 2019, UP filed its consent.

Under 49 C.F.R. § 1152.29(e)(2), if a notice of consummation of abandonment is not filed within (i) one year after the date of service of a decision permitting abandonment (provided there are no legal or regulatory barriers to consummation), or (ii) 60 days of the satisfaction, expiration, or removal of the last legal or regulatory barrier to consummation, whichever is later, the abandonment authority expires. Section 1152.29(e)(2) also provides that a railroad may file a request for an extension of time to file a notice of consummation as long as it does so sufficiently in advance of the expiration of the deadline. UP did not file a notice of consummation or a request to extend the consummation deadline by June 29, 2018 (60 days after the expiration of the NITU). Accordingly, UP's authority to abandon would have expired on that day.

Here, however, the City's April 30, 2018 request to extend the interim trail use negotiating period was filed prior to the expiration of the previously approved negotiating period, and UP promptly filed a response. That the City's April 30, 2018 request was not granted before UP's consummation deadline passed is not the fault of the parties. However, the Board also notes that UP did not file a request to extend its consummation deadline and the City did not submit a subsequent request to extend the NITU negotiating period in October 2018. Nevertheless, under the circumstances, the Board will waive the 60-day provision at 49 C.F.R. § 1152.29(e)(2) to the extent it would have resulted in the expiration of UP's abandonment authority on June 29, 2018, and will grant the City's April 25, 2019 request to extend the NITU negotiating period.⁴ The 60-day provision will again apply with respect to any future expiration

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extensions of the negotiating period, UP filed a joint notice of trail use agreement between UP and the Village for that 1.05-mile segment.

³ By letter filed on May 27, 2015, UP stated that the portion of the Line from milepost 5.8 near Wilson Avenue to milepost 7.1 near Bryn Mawr Avenue had been withdrawn from the abandonment authorization and would remain part of UP's railroad system. For that reason, subsequent extensions of the City's NITU have applied only to the segment of the Line between milepost 7.1 and milepost 8.4.

⁴ See GTE Serv. Corp. v. FCC, 782 F.2d 263, 273-74 & n.12 (D.C. Cir. 1986).

or removal of all legal and regulatory barriers to consummation. If an interim trail use agreement is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

It is ordered:

1. The provision at 49 C.F.R. § 1152.29(e)(2) setting a 60-day deadline for filing a notice of consummation upon the expiration of any legal or regulatory barriers is waived, as described above.
2. The City's April 25, 2019 request for an extension of the interim trail use negotiating period for the portion of the Line between milepost 7.1 and milepost 8.4 is granted. If an interim trail use agreement is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h).
3. The interim trail use negotiating period is extended to October 22, 2019.
4. This decision is effective on the date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.